REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2633 OF 2017

EX. GNR. LAXMANRAM POONIA (DEAD) THROUGH LRS. ….Appellant

Versus

UNION OF INDIA AND ORS. …Respondents

J U D G M E N T

R. BANUMATHI J.

This appeal arises out of the order dated 21.03.2014 passed by the Armed Forces Tribunal, Regional Bench, Jaipur, Rajasthan in O.A. No. 200 of 2010, thereby declining award of disability pension to the appellant. The Tribunal *vide* order dated 23.02.2016 also dismissed M.A. No. 390 of 2015 filed by the appellant seeking leave to appeal under Section 31 of the Armed Forces Tribunal Act.

2. The facts relevant for disposal of this appeal are as follows:- The appellant was enrolled in the Indian Army on 14.09.2005. His basic military training was convened at Army Air Defence Centre Nasik Road Camp, commencing from 16.09.2005 and after completion of training,

he was posted at 27 AD Regiment for further service. It is the case of the appellant that on the eve of Diwali Festival in November, 2007, he was overburdened with work due to scarcity of staff. Due to continuous restless duty hours for several days, he suffered hypertension resulting in lack of sleep and hunger. Ultimately, he requested the Commanding Officer of his Unit to sanction him leave considering his critical condition. However, instead of granting leave, the Commanding Officer got him admitted in 174 Military Hospital on 11.11.2007, acknowledging the critical condition of the appellant. The Doctor diagnosed the appellant to be suffering from **acute schizophrenia like psychotic disorder**. The appellant was discharged from 174 Military Hospital on 14.03.2008. Thereafter, he was shifted to Military Hospital *Chandimandir* and was admitted to psychiatric ward on 28.08.2008. He was subjected to a Military Board held at 174 Military Hospital for his recategorisation. After some time, he was granted sick leave for a few days. However, he was again admitted to 174 Military Hospital on 15.02.2009, and was also subjected to a Medical Board and thereafter, he was discharged from the hospital and was sent to his Unit.

3. As per the appellant, he was again entrusted with hard duty on 02.05.2009 and was also compelled to work at night hours, because of

which the disease so detected again aggravated. Ultimately, he had to be admitted to Command Hospital *Chandimandir* on 05.05.2009, from where he got discharged on 12.06.2009. He was again admitted to Command Hospital *Chandimandir* on 10.07.2009, from where he was discharged on 06.10.2009. He was brought before a duly constituted Invaliding Medical Board on 09.09.2009 to assess the cause and degree of disablement. The Invaliding Medical Board opined that he was suffering from '**acute Schizophrenia like psychotic disorder**'. Medical Board further opined that the disability being constitutional in nature is not connected with Military Service. His disability was assessed at 60% for life but was viewed as neither attributable to nor aggravated by Military Service. Ultimately, he was invalided out of service with effect from 07.10.2009 under Rule 13(3)(iii) of the Army Rules, 1954. His claim for grant of disability pension was forwarded to the Principal Controller of Defence Accounts (Pension) Allahabad, which was rejected *vide* order dated 02.07.2010 on the ground that the disability suffered by the applicant is neither attributable to nor aggravated by Military Service.

4. The appellant challenged the order dated 02.07.2010 by filing an application before the Tribunal seeking disability pension. The Tribunal

dismissed the application filed by the appellant holding that the disability being '**constitutional**' in nature is not connected with Military Service. His disability was assessed at 60% for life; but was viewed as neither attributable to nor aggravated by Military Service. The Tribunal specifically held that though the Invaliding Medical Board categorically opined that he was suffering from '**Acute Schizophrenia like psychotic disorder**', the disability of the applicant being constitutional in nature cannot be considered to be connected with Military Service. Thus, holding that there was no casual connection between disablement and the Military Service for attributability or aggravation to be conceded, the Tribunal dismissed the application.

5. The Appellant Laxman Ram Poonia expired on 01.06.2015 at Maulsar. The wife of the appellant filed application being M.A. No. 390/2015 under Section 31 of Armed Forces Tribunal Act, 2007 before the Tribunal seeking leave to file appeal before this Court against the final order dated 21.03.2014 passed by Armed Forces Tribunal in O.A. No. 200/2010 and the same was dismissed by the Tribunal *vide* order dated 23.02.2016. Challenging the order passed by the Tribunal, wife of Laxman Ram Poonia has filed the present Civil Appeal under Section 30 of the Armed Forces Tribunal Act, 2007.

6. Learned counsel for the appellant submitted that the Tribunal was not justified in dismissing the application filed by the appellant ignoring the settled position of law that if the disability for which a personnel was invalided out of service was not there at the time of recruitment, as per the decision in ***Dharamvir Singh v. Union of India and Ors.*** (2013) 7 SCC 316, then it must be presumed that the disability occurred due to Military Service. The counsel contended that relying solely on the opinion of Medical Board, it could not have been said that the disability was neither attributable to nor aggravated by the Military Service. Drawing our attention to Rule 14 of the Entitlement Rules for Casualty Pensionary Awards, 1982, the appellant contended that the Tribunal ought to have held that Laxman Ram Poonia developed Schizophrenia due to Military Service and the conditions for awarding disability pension are satisfied and Tribunal should have awarded the disability pension.

7. Learned Additional Solicitor General contended that the opinion of the Medical Board that the disease is held neither attributable to nor aggravated by Military Service is unimpeachable so far, and thus, the appellant was rightly denied disability pension. It was further contended that psychiatric disorder of the person cannot be detected by the Medical Board conducting medical examination at the time of enrollment

in service, in the absence of previous history or overt manifestation and it was on the appellant to specifically prove that he was not suffering from '**Acute Schizophrenia like psychotic disorder**' at the time of his enrollment, which he failed to so. The Additional Solicitor General contended that application filed by the appellant seeking disability pension was rightly dismissed by the Tribunal and no reason warranting interference.

8. We have heard the parties before us and have also perused the impugned order and materials available on record.

9. When the appellant was enrolled in the Indian Army on 14.09.2005, nothing was recorded in his service record that he was suffering from any disease or disability. Likewise, during the entire period of training and while he was performing his service at 27 AD Regiment till 2007, there was no sign of any abnormal behaviour or disability. For the first time, in or about 2007, the appellant is alleged to have shown his agitated behaviour. It is the case of the respondent that on the expiry of his sick leave on 11.12.2008, the appellant was admitted to Command Hospital (Western Command) *Chandimandir*

where he was downgraded to medical category S3(T-24) H1A1P1E1 for six months with effect from 13.03.2008. The appellant was again admitted to the Military Hospital on 10.02.2009 for review of his medical category where his medical categorization was upgraded to S2 (T-24) HIAIPIEI with effect from 11.02.2009 and was discharged from the hospital on 18.02.2009. The appellant was again admitted to the Command Hospital C*handimandir* on 05.05.2009 and he was finally discharged from the service on 26.06.2009. Considering appellant's disability and percentage of disability, as assessed by the Medical Board, the respondents found it apposite to invalidate appellant's service under the provisions of Rule 13(3)(iii) of the Army Rules, 1954.

10. The point falling for consideration is whether the **schizophrenia like psychotic disorder disability** of the appellant Laxman Ram Poonia was attributable or aggravated due to Military Service and whether the appellant is entitled to disability pension.

11. Regulation 173 of Pension Regulations for the Army, 1961 specifically deals with the primary conditions for the grant of disability pension. It reads as under:-

> "**173.** ***Primary conditions for the grant of disability pension***.— Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over.
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> The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II."

By a bare perusal of the aforesaid Regulation, it is clear that disability pension in normal course is granted to an individual: (*i*) who is invalided out of service on account of a disability which is attributable to or aggravated by Military Service, and (*ii*) who is assessed at 20% or over disability, unless specifically provided otherwise.

12. A disability "***attributable to or aggravated by military service***" is determined as per the **Entitlement Rules for Casualty Pensionary Awards, 1982**, as shown in Appendix II. Rule 5 of the said Rules relates to approach to be adopted while considering the question of entitlement to casualty pension award. It lays down certain presumptions to be made while evaluating the disabilities. Rule 5 reads as under:-

> "**5.** The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:
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> ***Prior to and during service***
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> (*a*) A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.

> (*b*) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health, which has taken place, is due to service."

From Rule 5 we find that a general presumption is to be drawn that a member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance. If a person is discharged from service on medical ground for deterioration in his health it is to be presumed that the deterioration in the health has taken place due to service.

13. Other relevant provisions for our purposes are Rules 14(a), 14(b), 14(c) and 14(d) of **Entitlement Rules for Casualty Pensionary Awards, 1982** as amended *vide* Government of India, Ministry of Defence Letter No.1(1)/81/D(Pen-C) dated 20-6-1996, and the same read as follows:-

> **Diseases:**
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> **14. (*a*)** For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:
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> (*i*) That the disease has arisen during the period of military service, and
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> (*ii*) That the disease has been caused by the conditions of employment in military service.
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> **(*b*)** If medical authority holds, for reasons to be stated, that the disease although present at the time of enrolment could not have

been detected on medical examination prior to acceptance for service, the disease, will not be deemed to have arisen during service. In case where it is established that the military service did not contribute to the onset or adversely affect the course (*sic* of the) disease, entitlement for casualty pensionary award will not be conceded even if the disease has arisen during service.

(*c*) Cases in which it is established that conditions of military service did not determine or contribute to the onset of the disease but, influenced the subsequent course of the disease, will fall for acceptance on the basis of aggravation.

(*d*) In case of congenital, hereditary, degenerative and constitutional diseases which are detected after the individual has joined service, entitlement to disability pension shall not be conceded unless it is clearly established that the course of such disease was adversely affected due to factors related to conditions of military services."

14. After referring to the above amended Rules 14(a), 14(b), 14(c) and 14(d) of **Entitlement Rules for Casualty Pensionary Awards, 1982**, in ***Dharamvir Singh v. Union of India and Ors.*** (2013) 7 SCC 316, this Court clarified the law on the point in the following words:-

"**21.1.** As per Rule 14(*a*) we notice that for acceptance of a disease as attributable to military service, conditions are to be satisfied that the disease has been arisen during the military service, and caused by the conditions of employment in military service which is similar to Rule 14(*c*) of the printed version as relied on by the appellant. Rule 14(*b*) cited by the respondents is also similar to the published Rule 14.

21.2. Rule 14(*c*) cited by the respondents relates to the cases in which it is established that conditions of military service did not determine or contribute to the onset of the disease but, influenced the subsequent course of the disease, will fall for acceptance on the basis of aggravation.

21.3. Rule 14(*d*) cited by the respondents relates to diseases which are detected after the individual has joined the service, which entails disability pension but it is to be established that the course of such disease was adversely affected due to factors related to the conditions of military service.

> **22.** If the amended version of Rule 14 as cited by the respondents is accepted to be the Rule applicable in the present case, even then the onus of proof shall lie on the respondent employers in terms of Rule 9 and not the claimant and in case of any reasonable doubt the benefit will go more liberally to the claimants."

15. Further, referring to the **Pension Regulations for the Army, 1961** and the **General Rules of Guide to Medical Officers (Military Pensions) 2002** and observing that whether deterioration of disability was due to Military Service or not will vary according to the nature of disease/disability, in paras (23) to (26) of ***Dharamvir (supra)***, this Court held as under:-

> "**23.** The Rules to be followed by the Medical Board in disposal of special cases have been shown under Chapter VIII of the General Rules of Guide to Medical Officers (Military Pensions), 2002. Rule 423 deals with "Attributability to service" relevant portion of which reads as follows:
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> > "**423. (*a*)** For the purpose of determining whether the cause of a disability or death resulting from disease is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions. It is however, essential to establish whether the disability or death bore a causal connection with the service conditions. All evidence both direct and circumstantial will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt for the purpose of these instructions should be of a degree of cogency, which though not reaching certainty, nevertheless carries a high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his/her favour, which can be dismissed with the sentence 'of course it is possible but not in the least probable' the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of the doubt could be

given more liberally to the individual, in cases occurring in field service/active service areas.

* * *

(*c*) The cause of a disability or death resulting from a disease will be regarded as attributable to service when it is established that the disease arose during service and the conditions and circumstances of duty in the Armed Forces determined and contributed to the onset of the disease. Cases, in which it is established that service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for service in the Armed Forces. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(*d*) The question, whether a disability or death resulting from disease is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a Medical Board or by the medical officer who signs the Death Certificate. The Medical Board/Medical Officer will specify reasons for their/his opinion. The opinion of the Medical Board/Medical Officers, insofar as it relates to the actual cause of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be accepted as attributable to/aggravated by service for the purpose of pensionary benefits will, however, be decided by the pension sanctioning authority."

24. Therefore, as per Rule 423 the following procedures are to be followed by the Medical Board:

24.1. Evidence both direct and circumstantial to be taken into account by the Board and benefit of reasonable doubt, if any would go to the individual;

24.2. A disease which has led to an individual's discharge or death will ordinarily be treated to have been arisen in service, if no note of it was made at the time of the individual's acceptance for service in the Armed Forces.

24.3. If the medical opinion holds that the disease could not have been detected on medical examination prior to acceptance for service and the

disease will not be deemed to have been arisen during military service the Board is required to state the reason for the same.

25. Chapter II of the Guide to Medical Officers (Military Pensions), 2002 relates to "Entitlement: General Principles". In the opening Para 1, it is made clear that the Medical Board should examine cases in the light of the etiology of the particular disease and after considering all the relevant particulars of a case, record their conclusions with reasons in support, in clear terms and in a language which the Pension Sanctioning Authority would be able to appreciate fully in determining the question of entitlement according to the Rules. Medical officers should comment on the evidence both for and against the concession of entitlement; the aforesaid paragraph reads as follows:

> "1. Although the certificate of a properly constituted medical authority vis-à-vis the invaliding disability, or death, forms the basis of compensation payable by the Government, the decision to admit or refuse entitlement is not solely a matter which can be determined finally by the medical authorities alone. It may require also the consideration of other circumstances e.g. service conditions, pre- and post-service history, verification of wound or injury, corroboration of statements, collecting and weighing the value of evidence, and in some instances, matters of military law and discipline. Accordingly, Medical Boards should examine cases in the light of the etiology of the particular disease and after considering all the relevant particulars of a case, record their conclusions with reasons in support, in clear terms and in a language which the Pension Sanctioning Authority, a lay body, would be able to appreciate fully in determining the question of entitlement according to the Rules. In expressing their opinion Medical Officers should comment on the evidence both for and against the concession of entitlement. In this connection, it is as well to remember that a bare medical opinion without reasons in support will be of no value to the Pension Sanctioning Authority."

26. Para 6 suggests the procedure to be followed by service authorities if there is no note, or adequate note, in the service records on which the claim is based."

16. We have extensively quoted the judgment from ***Dharamvir Singh's case*** as it has referred and quoted almost all the governing regulations and rules like Pension Regulations for the Army, 1961, the Entitlement Rules for Casualty Pensionary Awards, 1982 and General

Rules of Guide to Medical Officers (Military Pensions) 2002. After referring to the above Regulations and Rules in ***Dharamvir Singh (supra)*** in para (29), this Court summarized the legal position as under:-

> "**29.** A conjoint reading of various provisions, reproduced above, makes it clear that:
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> **29.1.** Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).
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> **29.2.** A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(*b*)].
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> **29.3.** The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).
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> **29.4.** If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(*c*)].
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> **29.5.** If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(*b*)].
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> **29.6.** If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(*b*)]; and
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> **29.7.** It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 — "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

17. The law laid down in ***Dharamvir (supra)*** was re-affirmed in ***Union of India and Anr. v. Rajbir Singh*** (2015) 12 SCC 264, where this Court observed that the legal position laid down in ***Dharamvir Singh's case*** is in tune with the Pension Regulations, the Entitlement Rules and Guidelines issued to the Medical Officers. Relevant excerpt from the said judgment is contained in paras (14) and (15), which read as under:-

> "**14.** The legal position as stated in *Dharamvir Singh case* (2013) 7 SCC 316 is, in our opinion, in tune with the Pension Regulations, the Entitlement Rules and the Guidelines issued to the Medical Officers. The essence of the rules, as seen earlier, is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the time of such entry. More importantly, in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service. This necessarily implies that no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service.
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> **15.** From Rule 14(*b*) of the Entitlement Rules it is further clear that if the medical opinion were to hold that the disease suffered by the member of the armed forces could not have been detected prior to acceptance for service, the Medical Board must state the reasons for saying so. Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces. There may indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with such service. The burden to establish such a disconnect would lie heavily upon the employer for otherwise the rules raise a presumption that the deterioration in the health of the member of the service is on account of military service or aggravated by it. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same. The very fact that he was upon proper physical and other tests found fit to serve in the army should rise as indeed the

> rules do provide for a presumption that he was disease-free at the time of his entry into service. That presumption continues till it is proved by the employer that the disease was neither attributable to nor aggravated by military service. For the employer to say so, the least that is required is a statement of reasons supporting that view. That we feel is the true essence of the rules which ought to be kept in view all the time while dealing with cases of disability pension."

18. In the present case, as per the opinion of the Medical Board, disability attending the appellant is acute schizophrenia like psychotic disorder and assessed percentage of the disablement is 60% for life. The Medical Board in its report dated 09.09.2009 has also opined that the disability is neither attributable to nor aggravated by Military Service. The relevant portion of Medical Board's opinion is as under:-

> "1. Though the disablement has been mentioned in percentage in para 6 of Part V, this does not mean eligibility for disability pension since the Disability/Disabilities is/are neither attributable to nor aggravated by service"
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> 2. Opinion of assessment by the Board is recommendatory in nature and is subject to acceptance by Pension Sanctioning Authority.
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> Or
>
> 1. Individual is not entitled for disability pension for the disability/disabilities since the same is/are not attributable to/aggravated by service.
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> 2. Opinion of assessment by the Board is recommendatory in nature and is subject to acceptance by Pension Sanctioning Authority."

Notably, the Medical Board has not given any reason in support of its opinion, particularly, in reference to the fact that there was no note of such disease or disability available in the service record of the appellant at the time of entering Military Service.

19. Learned Additional Solicitor General appearing for respondent-Union of India has submitted that when the Medical Board recorded a specific finding that the disability was neither attributable to nor aggravated by the Military Service, the same must be given due weight and credence. In support of his contention, the learned counsel placed reliance on dictum of this Court in ***Union of India v. Ravinder Kumar*** (2015) 12 SCC 291, wherein it was held as under:-

> "**4.** This Court recently decided an identical case in *Union of India* v. *Jujhar Singh* (2011) 7 SCC 735 and after reconsidering a large number of earlier judgments including *Ministry of Defence* v. *A.V. Damodaran* (2009) 9 SCC 140, *Union of India v. Baljit Singh* (1996) 11 SCC 315 and *ESI Corpn.* v. *Francis De Costa* (1996) 6 SCC 1, came to the conclusion that in view of Regulation 179, a discharged person can be granted disability pension only if the disability is attributable to or aggravated by Military Service and such a finding has been recorded by Service Medical Authorities. In case the Medical Authorities record the specific finding to the effect that disability was neither attributable to nor aggravated by the Military Service, the court should not ignore such a finding for the reason that Medical Board is specialised authority composed of expert medical doctors and it is a final authority to give opinion regarding attributability and aggravation of the disability due to the Military Service and the conditions of service resulting in the disablement of the individual. A person claiming disability pension must be able to show a reasonable nexus between the act, omission or commission resulting in an injury/ailment to the person and the normal expected standard of duties and way of life expected from such person. [See also *Govt. of India (Ministry of Defence)* v. *Ajit Singh* (2009) 7 SCC 328.]"

20. There is no gainsaying that the opinion of the Medical Board, which is an expert body has to be given due weight and credence. But the opinion of the Medical Board cannot be read in isolation; it has to be read in consonance with the **Entitlement Rules for Casualty Pensionary**

Awards, 1982 and **General Rules of Guide to Medical Officers (Military Pensions) 1982**. As per Chapter II of the Guide to Medical Officers (Military Pensions), 2002, which relates to "Entitlement: General Principles", it is made clear that the Medical Board should examine cases in the light of the etiology of the particular disease and only after considering all the relevant particulars of a case, the board should record its conclusions with reasons so as to enable the Pension Sanctioning Authority to examine the question of entitlement of pension as per Rules.

21. As referred to above, in ***Dharamvir Singh's case***, it was observed that it is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the **General Rules of Guide to Medical Officers (Military Pensions), 2002 – "Entitlement: General Principles"**, relevant extract in this behalf reads as under:-

> "**27.** Para 7 talks of evidentiary value attached to the record of a member's condition at the commencement of service e.g. pre-enrolment history of an injury, or disease like epilepsy, mental disorder, etc. Further, guidelines have been laid down at Paras 8 and 9, as quoted below:
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> > "7. Evidentiary value is attached to the record of a member's condition at the commencement of service, and such record has, therefore, to be accepted unless any different conclusion has been reached due to the inaccuracy of the record in a particular case or otherwise. Accordingly, if the disease leading to member's invalidation out of service or death while in service, was not noted in a medical report at the commencement of service, the inference would be that the disease arose during the period of member's

Military Service. It may be that the inaccuracy or incompleteness of service record on entry in service was due to a non-disclosure of the essential facts by the member e.g. pre-enrolment history of an injury or disease like epilepsy, mental disorder, etc. It may also be that owing to latency or obscurity of the symptoms, a disability escaped detection on enrolment. Such lack of recognition may affect the medical categorisation of the member on enrolment and/or cause him to perform duties harmful to his condition. Again, there may occasionally be direct evidence of the contraction of a disability, otherwise than by service. In all such cases, though the disease cannot be considered to have been caused by service, the question of aggravation by subsequent service conditions will need examination.

The following are some of the diseases which ordinarily escape detection on enrolment:

(*a*) Certain congenital abnormalities which are latent and only discoverable on full investigations e.g. Congenital Defect of Spine, Spina bifida, Sacralisation,

(*b*) Certain familial and hereditary diseases e.g. Haemophilia, Congential Syphilis, Haemoglobinopathy.

(*c*) Certain diseases of the heart and blood vessels e.g. Coronary Atherosclerosis, Rheumatic Fever.

(*d*) Diseases which may be undetectable by physical examination on enrolment, unless adequate history is given at the time by the member e.g. Gastric and Duodenal Ulcers, Epilepsy, Mental Disorders, HIV Infections.

(*e*) Relapsing forms of mental disorders which have intervals of normality.

(*f*) Diseases which have periodic attacks e.g. Bronchial Asthma, Epilepsy, Csom, etc.

8. The question whether the invalidation or death of a member has resulted from service conditions, has to be judged in the light of the record of the member's condition on enrolment as noted in service documents and of all other available evidence both direct and indirect.

In addition to any documentary evidence relative to the member's condition to entering the service and during service, the member must be carefully and closely questioned on the circumstances which led to the advent of his disease, the duration, the family history, his pre-service history, etc. so that all evidence in support or

> against the claim is elucidated. Presidents of Medical Boards should make this their personal responsibility and ensure that opinions on attributability, aggravation or otherwise are supported by cogent reasons; the approving authority should also be satisfied that this question has been dealt with in such a way as to leave no reasonable doubt.
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> 9. On the question whether any persisting deterioration has occurred, it is to be remembered that invalidation from service does not necessarily imply that the member's health has deteriorated during service. The disability may have been discovered soon after joining and the member discharged in his own interest in order to prevent deterioration. In such cases, there may even have been a temporary worsening during service, but if the treatment given before discharge was on grounds of expediency to prevent a recurrence, no lasting damage was inflicted by service and there would be no ground for admitting entitlement. Again a member may have been invalided from service because he is found so weak mentally that it is impossible to make him an efficient soldier. This would not mean that his condition has worsened during service, but only that it is worse than was realised on enrolment in the army. To sum up, in each case the question whether any persisting deterioration on the available evidence which will vary according to the type of the disability, the consensus of medical opinion relating to the particular condition and the clinical history."

22. In the present case, it is undisputed that the appellant was not suffering from any disease/disability at the time of entering into Military Service. It was on the respondent to show that the appellant was suffering from schizophrenia at the time of entering into service by producing any document viz. medical prescription etc. In the absence of any note in the service record in this regard at the time of joining the Military Service, the Medical Board should have called for the service records and looked into the same; but nothing is on record to suggest that any such record was called for by the Medical Board to arrive at the

conclusion that the disability was not due to Military Service. The Medical Board simply stated that the disability is neither attributable to nor aggravated by Military Service. The relevant portion reads as under:

> "1. Though the disablement has been mentioned in percentage in para 6 of Part V, this does not mean eligibility for disability pension since the Disability/Disabilities is/are neither attributable to nor aggravated by service"
>
> 2. Opinion of assessment by the Board is recommendatory in nature and is subject to acceptance by Pension Sanctioning Authority."

In the absence of any evidence on record to show that the appellant was suffering from any such disease like schizophrenia at the time of entering into the Military Service, it will be presumed that the appellant was in a sound mental condition at the time of entering into the Military Service and the deterioration of health has taken place due to Military Service.

23. Based on the above discussion, we hold that the Tribunal did not examine the case at hand in the light of the Army Pension Regulations, 1961, the Entitlement Rules for Casualty Pensionary Awards, 1982 and General Rules of Guide to Medical Officers (Military Pensions) 2002 and, therefore, the impugned order cannot be sustained. Applying the principles of ***Dharamvir Singh's case*** and ***Rajbir Singh's case***, it has to

be presumed that the disability of the appellant bore a casual connection with the service conditions. The appellant was diagnosed to be suffering from medical disability at 60% for life on 09.09.2009 and he was discharged from service on 7.10.2009. After invalidation from the service, the appellant passed away on 01.06.2015. By order dated 13.02.2017 in I.A. No. 3/2016, the legal heirs have been ordered to be substituted. Hence wife of the appellant and other legal heirs shall be entitled to disability pension as per the Rules.

24. In the result, the impugned order is set aside and the appeal is allowed. The respondents are directed to pay the disability pension to the wife and other substituted legal heirs of Laxmanram Poonia as per the Rules and the same shall be complied within eight weeks from today. No costs.

……..……J.
[DIPAK MISRA]

……..……J.
[R. BANUMATHI]

New Delhi;
February 22, 2017